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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,794	02/20/2002	Isabelle Rebeaud	14926	7036

7590 09/11/2006

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400 Garden City Plaza
Garden City, NY 11530

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/937,794	Applicant(s) REBEAUD, ISABELLE	
	Examiner Lien T. Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The finality of the office action mailed on 3/9/06 is withdrawn in view of the newly discovered reference(s) to Rahim. Rejections based on the newly cited reference(s) follow.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persi in view of Viviano et al and Rahim.

Persi discloses a method of making a pizza food product. The method comprises the steps of shaping a dough into a rectangular shape, placing pizza ingredients along the central portion of the dough, folding the dough along its longitudinal length such that the long edges are in abutment, pressing the edges against each other so as to tight seal the ingredients and heating the filled dough product. The cooked product is packaged in suitable packaging material. (see columns 3-4)

Persi does not teach folding the dough after it is cooked and coating the edge with an edible paste of starch. Also, the Persi method comprises the additional step of forming a toroidal shape after folding the dough.

Viviano et al disclose a method of making filled food product. They teach to apply food starch to dough layers to help the dough regions to stick to each other. (see col. 6 lines 10-12)

Rahim teaches a process for producing pastry products. The process comprises the steps of forming dough discs having controlled thickness and diameter, cooking the dough discs, filling the dough discs and applying a pasting spray to seal the filling in the

Art Unit: 1761

dough discs by closing the peripheral edges the dough layer around the filling material (see col. 1 lines 23-29, col. 2 lines 20-45, col. 4 lines 35-47, and claim 1)

It would have been obvious to one skilled in the art to omit the step of bringing the edges together to form a toroidal shape if one wants to make a rectangular shape product. Such step only affects the shape of the product and not the type of product. As to the folding after cooking, these alternative steps of forming closed pocket product are known as shown by the Rahim reference which teaches folding and sealing with a paste after cooking. It would have been obvious to one skilled in the art to substitute one known processing technique for another known technique. The folding after cooking or before cooking gives the same product. In cooking, it is not uncommon to use known alternative steps to make the same product. The cooking of the product in an open face manner gives the advantage that the filled ingredients will be cooked in a shorter amount of time because they are not enclosed within the dough shell. Rahim teaches to apply a pasting; starch is well known to be used as adhesive as shown by Viviano et al. It would have been obvious to one skilled in the art to use starch as shown by Viviano et al to seal the edges of the dough layers when the dough is folded after cooking. It would have been obvious to apply the paste while the dough is hard to cause gelatinization of the starch so that the starch will cause adherence of the dough layers. It would also have been obvious to use flour as the alternative adhesive because flour contain starch.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viviano.

Viviano et al disclose a filled pocket dough product. The product is formed by folding one portion of the dough over another portion to form a pocket enclosing the filling. The product is baked. In addition to other means of minimizing seal breaches, Viviano et al teach to apply food starch to dough layers to help the layers to stick to each other. (see col. 3 lines 6-24, col. 6 lines 5-11)

The forming of the pouch in the hot fold in hot state by folding and rolling after cooking is a difference in processing steps which do not determine the patentability of the product. The Viviano et al product is the same product as claimed; the product has a cordon of edible paste because Viviano et al teach to apply layer of food starch between the dough layers. As to the distant between the edges, it is unclear what applicant means by this and the specification does not disclose any distance between the borders of the dough layers. As to the folding as recited in claim 10, it would have been obvious to one skilled in the art to use other fold depending on the look wanted for the product. The folding of longitudinal border and lateral borders to enclose the filling is well known in the art. This is done in making pastries containing filling.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wed-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 7, 2006

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700